

**ORDINANCE NO. 3161-19**

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 62, "OFFENSES AND MISCELLANEOUS PROVISIONS" WITHIN DIVISION 2, "NOISE AND DISTURBANCE CONTROL", SECTION 62-98, PROVIDING FOR THE SAME NOISE CONTROLS THAT EXIST WITH THE CENTRAL BUSINESS DISTRICT TO ALSO APPLY WITH THE HANNIBAL SQUARE NEIGHBORHOOD COMMERCIAL DISTRICT AND TO CLARIFY EXISTING LANGUAGE; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Winter Park (the "City") recognizes that the hours of live music and other amplified sounds at venues located nearby residential homes and apartments can affect the livability and peaceful enjoyment of those residential neighbors; and

**WHEREAS**, the City recognizes that providing for uniform hours for certain types of live music and other noise and sounds for the control of noise in an equitable manner for both the Central Business District and the Hannibal Square Neighborhood Commercial District is in the best interests of the public and residents in order to protect the public health, safety and general welfare.

**NOW THEREFORE, BE IT ENACTED BY THE CITY OF WINTERPARK:**

**SECTION 1: Recitals.** The above recitals are true and correct, are adopted and incorporated herein, and constitute the legislative findings of the City Commission of the City of Winter Park.

**SECTION 2: Amendment.** That Chapter 62 "Offenses and Miscellaneous Provisions", Division 2 "Noise and Disturbance Control, Section 62-98 of the City of Winter Park Code of Ordinances is hereby amended as shown below (underlined language are additions; ~~stricken through~~ language are deletions; provisions not shown are not being amended):

**Chapter 62. Offenses and miscellaneous provisions.**

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**Sec. 62-98. –Central business district and Hannibal Square Neighborhood Commercial District.**

(a) The regulations of this section apply within the Central Business District and Hannibal Square Neighborhood Commercial District. As used in this section, the "Central Business District" shall have the same meaning as defined within the maps of the Central Business District adopted in the Definitions section of the Comprehensive Plan of the city, Article I, Chapter 58 and is generally is defined as that part of the city bordered by Webster Avenue on the north, Interlachen Avenue on the east, Fairbanks Avenue on the south and New York Avenue on the west and that part of the city zoned central business (C-2) district. As used in this section, the "Hannibal Square Neighborhood Commercial District" shall have the same meaning

as defined within the maps of the Hannibal Square Neighborhood Commercial District adopted in the Definitions section of the Comprehensive Plan of the city, Article I, Chapter 58 and is generally that part of the city fronting on New England Avenue, Hannibal Square, Morse Boulevard and Pennsylvania Avenue.

(b) It shall be unlawful for any person operating or occupying a motor vehicle on a street or highway between the hours of 10:00 p.m. and 7:00 a.m. to operate or amplify the sound produced by a radio, tape player, or other mechanical sound making device or instrument from within the motor vehicle so that the sound:

(1) Is plainly audible to a reasonably prudent person of ordinary sensibilities on a public street or highway within the Central Business District or within the Hannibal Square Neighborhood Commercial District but outside the motor vehicle in which the sound is created;

(2) Is plainly audible to a reasonably prudent person of ordinary sensibilities within a hotel or restaurant located within the Central Business District or within the Hannibal Square Neighborhood Commercial District; or

(3) Is at a level that equals or exceeds 50 dBA measured at the property line of the recipient of such sound.

(c) It shall be unlawful for any person on a public street or highway between the hours of 10:00 p.m. and 7:00 a.m. to operate or amplify the sound produced by a radio, tape player, or other mechanical sound making device or instrument so that the sound:

(1) Is plainly audible to a reasonably prudent person of ordinary sensibilities within a hotel or restaurant located within the Central Business District or within the Hannibal Square Neighborhood Commercial District; or

(2) Is at a level that equals or exceeds 50 dBA measured at the property line of the recipient of such sound.

(d) If a sound prohibited in subsection (b) of this section is created within a motor vehicle, the driver and each passenger shall be presumed to have individually and collectively used, operated or maintained such sound amplification device in violation of this section.

(e) It shall be unlawful for any person, business or establishment between the hours of 10:00 p.m. and 7:00 a.m. to provide musical entertainment in such manner as to create a plainly audible sound to a reasonably prudent person of ordinary sensibilities or detectable vibration that:

(1) Unreasonably disturbs the peace;

(2) Can be heard or felt at a distance of 50 feet from the building or structure in which such musical entertainment is located;

(3) Can be heard or felt inside any residential occupancy within another building or any tenant space within the same building; or

(4) Is in excess of 50 dBA as measured with a sound level meter inside any receiving property.

(f) A violation of any provision of this section shall be classified as a class II violation. Each successive repeated violation of this section shall be subject to a civil

penalty for the next higher violation classification. For example, a first violation of this section will be fined as a class II violation, a second violation will be fined as a class III violation, and so on. Nothing shall prohibit the city from enforcing this section by any other means. Further, the city commission shall have the right to revoke or suspend the permission for any musical entertainment for a period of time to be determined by the city commission in the case of repeated violations of this section.

(g) Exempted from the prohibitions of this section is the use of sound amplification devices in connection with the use of emergency, fire, police and ambulance vehicles, railway locomotives or railway crossing warning devices, emergency warning systems, and theft alarms, as well as the use of horns or other warning devices required by F.S. § 316.271 when necessary to ensure safe operation of the motor vehicle to which the horn or device is attached. Also exempted from this section is the use of sound amplification devices in connection with an event sanctioned by prior resolution or approval of the city commission or for which a special permit has been issued by the city, and the event has been given specific authority to produce sound amplification or noise within the scope of the permit.

**SECTION 3. INCONSISTENCY.** If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION 4: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, provision, or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then such invalidity or unconstitutionality shall not be held to invalidate or impair the validity, force, or effect of any other remaining provisions of this Ordinance.

**SECTION 5: CODIFICATION.** Section 2 of this Ordinance shall be codified and made a part of the City of Winter Code or Ordinances, and the sections of this Ordinance may be renumbered or re-lettered to accomplish this intention. The word "Ordinance" may be changed to "Section," "Article," or other appropriate word. The City Clerk is given liberal authority to ensure proper codification of this Ordinance, including the right to correct scrivener's errors.

**SECTION 6: EFFECTIVE DATE.** This Ordinance shall become effective immediately following approval by the City Commission at its second reading.

**ADOPTED** at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 9th day of December, 2019.

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Mayor Steve Leary

ATTEST:

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Rene Cranis, City Clerk